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Washington, DC 20224

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PLR-103588-20

Date:

July 17, 2020

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Dear :

This letter ruling modifies a prior letter ruling (PLR-103536-12) dated May 30, 2012 (the "Prior Letter Ruling"). The entire text of the Prior Letter Ruling is hereby incorporated by reference, except as modified below, for purposes of this supplemental letter ruling.

The representations section of the Prior Letter Ruling is hereby modified to add the following representation:

(10) Separate Account 1 will generally maintain more than x percent of its assets (other than cash and cash equivalents) directly and outside of its ownership interests in Disregard 1 (the "Directly Held Assets"). This standard will be deemed to be satisfied if the rolling average net value of the Directly Held Assets, calculated yearly for the five-year period ending on the last day of the most recent full calendar year or ending on such other date that Separate Account 1 may reasonably determine, equals more than x percent of the total net value of Separate Account 1 (including the Directly Held Assets).

The analysis section of the Prior Letter Ruling relating to the Pension Contracts is hereby modified to read as follows:

Pension Contracts:

Under the investor control doctrine, the holder of a variable life insurance or variable annuity contract will be treated as the owner of the assets held by a separate account that fund the contract if: (1) the contract holder possesses sufficient control over the investments made by the separate account (the "investor control prong"), or (2) the separate account assets are not available exclusively through the purchase of a life insurance or annuity contract (the "public availability prong").

Under the investor control doctrine, a variable life insurance or variable annuity contract holder can be treated as the owner of the assets held by a separate account that fund the contract, even when a separate account is adequately diversified or is not required to be diversified. Under § 817(h), investments upon which the Pension Contracts are based are not required to be adequately diversified. Whether the Pension Contract owners possess sufficient incidents of ownership over Separate Account 1 after the restructuring to be treated as the owner of Separate Account 1's assets depends on all of the relevant facts and circumstances. The Pension Contract owners will be treated as the owner of Separate Account 1's assets if either the investor control prong or the public availability prong of the investor control doctrine applies.

The public availability prong of the investor control doctrine generally provides that when the sole asset held by a separate account is available for purchase other than through the purchase of variable annuity or life insurance contracts, or other variable contracts from insurance companies, the contract holder will be treated as the owner of the asset held by the separate account. See Rev. Rul. 81-225; Rev. Rul. 2003-92. In such circumstances, the contract holder's position is substantially identical to what his or her position would have been if he or she had directly or indirectly (as in Situation 4 of Rev. Rul. 81-225) purchased an interest in the asset held by the separate account.

Following the restructuring, Separate Account 1's assets will primarily consist of ownership interests in Disregard 1. However, Separate Account 1 will generally maintain more than x percent of its assets as Directly Held Assets, which are separate from its ownership interests in Disregard 1. In addition, Taxpayer is not required to invest future money available to Separate Account 1 in Disregard 1 or any other particular asset, and has not promised Pension Contract owners that it will do so. As such, a Pension Contract owner's position is not substantially identical to what its position would have been if it had purchased an interest in NewCo (the only asset of which is an interest in Disregard 1).

Investment in Separate Account 1 is available solely through the purchase of a Pension Contract. The possibility that Separate Account 1 may make investments that are also available to the general public does not cause the Pension Contract owners to be treated as the owner of Separate Account 1's assets for federal income tax purposes. The public availability prong of the investor control doctrine set forth in Rev. Rul. 81-225 and Rev. Rul. 2003-92 will not apply to treat the Pension Contract owners as the owner of the assets held by Separate Account 1.

Furthermore, the investor control prong will not apply to treat the Pension Contract owners as the owner of Separate Account 1's assets. The Pension Contract owners may not select or direct a particular investment to be made with respect to Separate Account 1. The Pension Contract owners may not sell, purchase, or exchange assets held in Separate Account 1. All investment decisions concerning Separate Account 1 are made by Taxpayer or its investment manager in its sole and absolute discretion.

The investment strategy of Separate Account 1 of investing in real estate assets is sufficiently broad to prevent the Pension Contract owners from making particular investment decisions through investment in Separate Account 1. Only Taxpayer may add or substitute investment strategies in the future. In addition, per Taxpayer's guidelines, neither Taxpayer nor its investment manager is permitted to solicit the Pension Contract owners to make recommendations about the selection, quality or rate of return of any specific investment or group of investments held in Separate Account 1. The Pension Contract owners will not have any more control over the assets of Separate Account 1 than the contract owners in Rev. Rul. 82-54 or Rev. Rul. 2003-91.

Holding 1 of the Prior Letter Ruling is modified to read as follows:

(1) Following the proposed restructuring described above, Taxpayer will be considered the owner for federal income tax purposes of the Separate Account 1 assets.

The analysis section and Holding 2 related to the Non-Pension Contracts in the Prior Letter Ruling remain unchanged.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alexis A. MacIvor
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Financial Institutions and Products)

cc: